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Attorneys for Plaintiff
American Small Business League

ORIGINAL
FILED
JUN 14 2013
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WHA

AMERICAN SMALL BUSINESS LEAGUE

Plaintiff,

v.

UNITED STATES DEPARTMENT OF THE
ARMY

Defendant.

CASE NO.

CV 13 2736

COMPLAINT FOR INJUNCTIVE
RELIEF

FREEDOM OF INFORMATION ACT
(5 U.S.C. 552 (a)(3)(A))

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, ("FOIA") for injunctive and other appropriate relief to compel the disclosure and release of documents improperly withheld from Plaintiff by the Department of the Army.

JURISDICTION AND VENUE

2. This court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

THE PARTIES

3. Plaintiff is the American Small Business League ("ASBL"), an organization incorporated in California which has its principal place of business in Sonoma County, California. ASBL is a national organization established to research and focus public attention on emerging small business issues and to otherwise promote the interests of small businesses. ASBL's activities include the review of evolving federal and state government policy and procedures to determine possible impact on small business. As part of its mission, ASBL reviews government contract award data to determine when contracts required to be set aside for small business by the Small Business Act have instead been awarded to large corporations.

4. Defendant Department of the Army (hereinafter "Army") is an "agency" within the meaning of 5 U.S.C. § 552 (f).

PLAINTIFF'S FOIA REQUEST AND THE ARMY'S RESPONSE

5. On or about February 13, 2012, pursuant to the Freedom of Information Act ("FOIA"), ASBL requested records from Army consisting of "The Individual Subcontracting Report (ISR/SF 294) for the contract with PIID Number 0053 and IDVPIID Number W12P7T1 1DH607 to Harris Corporation, DUNS 002204600, as well as the Summary Subcontracting Report (SSR/SF 295) for Harris Corporation DUNS 002204600." A true and correct copy of the request is attached hereto as Exhibit A.

6. Army acknowledged receipt of ASBL's FOIA request by email on February 13, 2012. A true and correct copy of Army's acknowledgement is attached hereto as Exhibit B.

7. Army did not provide any substantive response to ASBL's FOIA request within the time period mandated by FOIA.

8. On March 5, 2012 ASBL appealed Army's failure to respond to its FOIA request. A true and correct copy of ASBL's appeal is attached hereto as Exhibit C.

9. Army did not respond to ASBL's March 5, 2012 appeal in the time allowed by FOIA, nor has it responded at all.

10. ASBL has a right of access to the documents requested pursuant to 5 U.S.C. § 552 (a)(3), and there is no legal basis for the Army's denial of such access. Accordingly, ASBL seeks an order from this court compelling the Army to provide the requested information.

CAUSE OF ACTION

**Violation of the Freedom of Information Act
for Wrongful Withholding of Agency Records**

11. The Army has wrongfully withheld documents requested by ASBL.

12. ASBL has exhausted the administrative remedies with respect to the Army's wrongful withholding of the requested documents.

13. ASBL is entitled to injunctive relief and an order from this Court compelling an immediate release and disclosure of the requested documents.

PRAYER FOR RELIEF

WHEREFORE, ASBL prays that this Court:

- A. Issue an order compelling Army to disclose all responsive documents in their entirety;
- B. Provide for expeditious proceedings in this action;
- C. Award ASBL its costs and reasonable attorneys' fees incurred in this action;
- and
- D. Grant such other relief as the Court may deem just and proper.

Dated: June 13, 2013

By: 
ROBERT E. BELSHAW
Attorneys for Plaintiff

February 13, 2012

Re: Freedom of Information Act Request

Dear FOIA Officer:

This is a request under the Freedom of Information/Privacy Act. I request that a copy of documents containing the following information be provided to me:

- The Individual Subcontracting Report (ISR/SF 294) for the contract with PIID Number 0053 and IDVPIID Number W15P7T11DH607 to Harris Corporation, DUNS 002204600, as well as the most recent Summary Subcontracting Report (SSR/SF 295) for Harris Corporation, DUNS 002204600.

In order to help to determine my status for purposes of determining the applicability of any fees, you should know that I am a Public Affairs Analyst for a not-for-profit news organization and am seeking information for use in our group's research and not for commercial use.

You may find more information about the American Small Business League on our website: www.asbl.com and our newsletter: www.asbl.com/Feb2_Newsletter.pdf

If necessary to discuss any aspect of my request, I would prefer all communication to be in written format, either via email, to erosenfeld@asbl.com, fax to 707-789-9580, or via letter.

Thank you for your consideration of this request.

Sincerely,

Elliott Rosenfeld, Public Affairs Analyst
erosenfeld@asbl.com
American Small Business League
3910 Cypress Dr.
Petaluma CA, 94954
(707) 789-9575

Elliott Rosenfeld

From: RMDA FOIA [DAFOIA@conus.army.mil]

Sent: Monday, February 13, 2012 4:28 PM

To: Elliott Rosenfeld

Subject: Out of Office AutoReply: Freedom of Information Act Request

Your inquiry has been received by the US Army Freedom Of Information Act (FOIA) office.

Thank you for contacting us,

Army FOIA

Thank you.

Classification: UNCLASSIFIED

Caveats: FOUO

2/15/2012

March 5, 2012

Re: Freedom of Information Act Request

Dear FOIA Officer:

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As the statutory time period for a response has expired, I am appealing this non-response. If I do not receive a response or the documents requested in full within 20 business days I will be forced to pursue legal action.

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4 **CAUSE OF ACTION**

5 **Violation of the Freedom of Information Act**
6 **for Wrongful Withholding of Agency Records**

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17 C. Award ASBL its costs and reasonable attorneys' fees incurred in this action;
18 and
19 D. Grant such other relief as the Court may deem just and proper.
20

21 Dated: June 13, 2013

22 By: *R. Belshaw*
23 ROBERT E. BELSHAW
24 Attorneys for Plaintiff
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February 13, 2012

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